

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
TAREK MEHANNA,)
Defendant.)

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.
UNITED STATES DISTRICT JUDGE

DAY THREE
JURY TRIAL

John J. Moakley United States Courthouse
Courtroom No. 9
One Courthouse Way
Boston, Massachusetts 02210
Thursday, October 27, 2011
10:19 a.m.

Marcia G. Patrisso, RMR, CRR
Cheryl Dahlstrom, RMR, CRR
Official Court Reporters
John J. Moakley U.S. Courthouse
One Courthouse Way, Room 3510
Boston, Massachusetts 02210
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Mechanical Steno - Computer-Aided Transcript

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8 - and -
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14 On Behalf of the Government

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On Behalf of the Defendant

I N D E X

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1 (The following proceedings were held in open court
2 before the Honorable George A. O'Toole, Jr., United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Boston, Massachusetts, on October 27, 2011.

6 The defendant, Tarek Mehanna, is present with counsel.
7 Assistant U.S. Attorneys Aloke Chakravarty and Jeffrey Auerhahn
8 are present, along with Jeffrey D. Groharing, Trial Attorney,
9 U.S. Department of Justice, National Security Division.)

01:37 10 (LOBBY CONFERENCE AS FOLLOWS:

21 My thought was we have enough numbers. We just excuse
22 them as part of the peremptory process in a sense so they get
23 washed away along with others getting washed away and nobody
24 knows the difference. If you want, I can be more specific
25 about the issues they raised, and I can tell you who they are.

1 They're No. 2, Wanda Chiaraluce; No. 12, Jacqueline Vangel; and
2 No. -- I think it was 71, John Murphy, who's not in the box.

3 Ms. Chiaraluce -- Paul can tell us -- she remembers
4 that some relative of hers had a -- went to high school with
5 Mehanna.

6 THE CLERK: She's the one who works for Verizon. Her
7 coworker -- her coworkers went to high school with Mehanna, and
8 so she thought that might be a problem that she can't be
9 impartial -- fair. That was her thing.

01:37 10 THE COURT: I think she may have told you that she
11 didn't think it was a problem, but she wanted to bring it to
12 our attention.

13 THE CLERK: No, no.

14 THE COURT: She thinks that is a problem?

15 THE CLERK: That was Vangel. That's the one with the
16 cousin. Jacqueline Vangel has two reasons. And she apologized
17 for not bringing them up on Tuesday, but she thought about them
18 afterwards. First is, she has an out-of-state trip planned on
19 December 9th to Pennsylvania for several days. Secondly, her
01:37 20 company is not going to pay her. I looked up to see her
21 company. It's Dartmouth Medical. So I spoke with the jury
22 room. Chances are, they probably won't pay her. It's going to
23 be a financial hardship for her.

24 And then John Murphy is -- he cannot be impartial.

25 He's been --

1 THE COURT: Let me -- he is -- I think he was an
2 insurance --

3 THE CLERK: Bright yellow sweater with the moustache,
4 nice guy, reddish hair. He's got a couple of problems. Number
5 1, he's been reading a lot in the press since Monday, and he
6 can't be fair and impartial. Number 2, he has a problem with
7 not being able to use the word "our troops." It makes his
8 blood boil. And, therefore, he does not want to sit.

9 THE COURT: Which apparently he learned about by
01:37 10 reading the newspapers.

11 THE CLERK: Sounds like everything came after the
12 fact.

13 My proposal is just to bounce them all, do it
14 unobtrusively. You'll come up and do your first round of
15 strikes. We'll just include the other 2 and 12. We'll fill
16 those seats as normal. Those people will be fair game. It
17 doesn't give them a clue --

18 THE CLERK: Like, when we call Murphy, have him come
19 up to the box and treat him as a peremptory there?

01:37 20 THE COURT: Just wash him out without --

21 MR. CARNEY: Speaking for the defendant, that
22 procedure is acceptable, your Honor.

23 THE COURT: Thank you.

24 I think we're about to get started.

25 MR. CARNEY: While we're here, I would like to renew

1 one objection to an exhibit of the government, and I bring it
2 to your attention because it's being used in the opening. It
3 is the photo of my client and two other men at Ground Zero,
4 where my client is smiling and holding the number -- the index
5 finger skyward.

6 The reason for my objection is that the prejudicial
7 impact so far outweighs any probative value that it should be
8 excluded from this trial. I'll leave it to the government to
9 say why there is probative value there, but if it's to reflect
01:37 10 the defendant's state of mind, I submit there's going to be so
11 much state-of-mind evidence offered by the government without
12 objection by us. Indeed, I'm going to concede the defendant's
13 state of mind in my opening statement. And the emotions that
14 -- having someone at Ground Zero, smiling, is so prejudicial
15 compared to the minimal, if any, probative value for the
16 defendant's state of mind that I would ask your Honor to
17 reconsider and exclude it.

18 THE COURT: What is the date that the photograph was
19 taken?

01:37 20 MS. BASSIL: It's in 2006 at some point.

21 MR. CHAKRAVARTY: I think that's right, 2005, yes.

22 The government's position obviously is it does go to
23 the defendant's state of mind. Defendant chose to go there and
24 pose in that position. This isn't a situation where it's just
25 a random kind of place and it's just one of many types of

1 expressions of his state of mind. This is squarely the fact
2 that he was responding to this call from al Qa'ida and trying
3 to be supportive of al Qa'ida.

4 THE COURT: Do you have intercepted conversations in
5 which he expresses support for the events of 9/11?

6 MR. CHAKRAVARTY: Yes.

7 THE COURT: Why isn't that enough?

8 MR. CHAKRAVARTY: Compared -- the standard is unfair
9 prejudice.

01:37 10 THE COURT: I understand.

11 MR. AUERHAHN: Substantially outweighs.

12 MR. CHAKRAVARTY: I know your Honor knows. But just
13 because we have so much evidence that he supported 9/11 doesn't
14 mean that one of our best pieces of evidence that speaks
15 volumes -- the defendant would receive this in an email. He
16 had it on his computer. He talked about --

17 THE COURT: Did he talk about the photograph?

18 MR. CHAKRAVARTY: Yes. He had numerous pilgrimages to
19 Ground Zero. This is the one photo we have of him actually
01:37 20 there with this particular group, both of whom are cooperators.

21 MS. BASSIL: I don't believe there's any conversation
22 about the photograph. There's conversations about going to New
23 York and Ali Abubakr says, Can we go to Ground Zero?

24 MR. CHAKRAVARTY: There are conversations as well, as
25 well as the cooperators.

1 THE COURT: I think they can use it. The reason I
2 asked about the date, I wanted to be sure it's relevant to the
3 scope of the Indictment; and if it's in 2006, then I think it
4 is. Okay. Thank you. We'll be out ourselves as soon as we
5 can.

6 . . . END OF LOBBY CONFERENCE.)

7 (The venire entered the room at 10:20 a.m.)

8 (The Court entered the room at 10:24 a.m.)

9 THE CLERK: United States vs. Tarek Mehanna,
01:43 10 continuation of jury selection. Please be seated.

11 THE COURT: Good morning, everyone. Sorry for the
12 delay. It's partly logistics, partly the weather. We're
13 finally ready to continue and, I think, conclude the process of
14 jury selection.

15 Let me ask if counsel are ready to approach the
16 sidebar. Are you?

17 MR. CHAKRAVARTY: We are, your Honor.

18 MR. CARNEY: Yes, your Honor. Thank you.

19 THE COURT: Okay. I'll see you at the side.

01:43 20 (SIDEBAR CONFERENCE AS FOLLOWS:

21 MR. CHAKRAVARTY: Your Honor, can we just confirm that
22 we do one; they do two; and then we do --

23 THE COURT: No, no. You do all yours for this round.
24 If you have three, you do three. If they have four, they do
25 four. Then that's the round. Those seats get filled. And

1 that's -- the newcomers are the --

2 MS. BASSIL: Just -- your Honor, Seat No. 2 is Wanda
3 Chiaraluce. I just wanted to make sure I've got the right seat
4 numbers.

5 MR. CHAKRAVARTY: 18.

6 MR. AUERHAHN: Seat No. 1.

7 MR. CHAKRAVARTY: Seat No. 1.

8 THE CLERK: 18.

9 MR. CHAKRAVARTY: 10, it's conveniently 10; 31, Seat
01:45 10 13.

11 THE CLERK: 31, that's Jacqueline, right?

12 MR. CHAKRAVARTY: Yes. And 14, also 14.

13 THE CLERK: Let me just pull their card out first
14 before you guys --

15 THE COURT: That's it? That's four?

16 MR. CHAKRAVARTY: That's four.

17 MR. AUERHAHN: Can we just have one second?

18 THE CLERK: Garcia, Nugent, Alex, Fredette.

19 THE COURT: Ready?

01:48 20 MS. BASSIL: Juror No. 4, Michele Azevedo; Seat No. 6,
21 Raymond Croteau, Jr., that's Juror No. 21; Seat No. 9, Juror
22 No. 9, Stephen Smith; Seat No. 15, Juror No. 33, Kevin
23 Zambruno; Seat No. 16, Juror No. 36, Brian Ferreira.

24 THE CLERK: After Zambruno was who?

25 MS. BASSIL: Seat No. 16, Juror No. 36.

1 THE COURT: A total of five?

2 MS. BASSIL: Yes.

3 THE CLERK: Ferreira, Zambruno, Smith, Croteau, and
4 Azevedo.

5 THE COURT: You're including --

6 THE CLERK: I already took care of that.

7 THE COURT: That will be a total of 11 people excused.

8 Okay.

9 . . . END OF SIDEBAR CONFERENCE.)

01:49 10 THE CLERK: The following jurors can be excused: Mr.
11 Ferreira; Mr. Zambruno; Mr. Smith; Mr. Croteau; Michele
12 Azevedo; Miss Vangel; Miss Chiaraluce; Miss Garcia; Miss
13 Nugent; Mr. Alex; and Miss Fredette. Just go back to the jury
14 room. Thank you very much.

15 Rosaby Sepulveda-Makumbi, will you take the first seat
16 in the first row, please.

17 MR. AUERHAHN: Mr. Lyons, could you give us the
18 numbers?

19 THE CLERK: I'm sorry. It's No. 38. Excuse me.
01:51 20 Leslie Wing is No. 40. You're going to be in Seat 2, next to
21 Rosaby. In Seat 4 will be No. 41, Joao Mendes. And in Seat 6
22 will be No. 42, Caroline Lawton. In Seat 9, No. 43, Michelle
23 Yuille; in Seat No. 10, No. 45, Margaret Fitzgerald; in Seat --
24 10, go right after Miss Yuille. In Seat No. 12, No. 46, Philip
25 Bernstein. In Seat 13 will be No. 48, Celia Oppedisano. In

1 Seat 14 will be No. 49, Leeann Ali. In Seat 15, No. 55,
2 Katherine Philips; and in Seat 16, No. 57, Sarah Richards.

3 (SIDEBAR CONFERENCE AS FOLLOWS:

4 THE COURT: Defense ready?

5 MR. CARNEY: No, your Honor.

6 MR. CHAKRAVARTY: Your Honor, for the record, just
7 because we haven't introduced him, behind our table, it's Paul
8 Bruemmer from our office, who's going to be running the
9 computer.

01:58 10 THE COURT: For technical reasons, he's No. 3.

11 MR. CHAKRAVARTY: Sorry. I don't --

12 THE COURT: There are different ports.

13 MR. CHAKRAVARTY: I understand.

14 THE COURT: All set?

15 MS. BASSIL: In Seat No. 2, Juror No. 40, Leslie Wing;
16 in Seat No. 6, Juror No. 42, Caroline Lawton; in Seat No. 9,
17 Juror No. 43, Michelle Yuille; in Seat No. 13, Juror No. 48,
18 Celia Oppedisano. That's it.

19 MR. AUERHAHN: Seat 2, Seat 6, Seat 9 and Seat 13?

01:59 20 THE COURT: Right.

21 MR. AUERHAHN: Thank you.

22 MR. CHAKRAVARTY: For the government, Seat 1, Juror
23 38; and the juror in Seat 16.

24 THE COURT: I don't think he got the first one.

25 THE CLERK: Rosaby, 38. I got her.

1 MR. CHAKRAVARTY: Juror No. 57. That's it.

2 THE COURT: Just -- you've used six. You have two
3 remaining. You have used nine. You have three remaining.

4 MS. BASSIL: Correct.

5 . . . END OF SIDEBAR CONFERENCE.)

6 THE CLERK: The following jurors may be excused: Miss
7 Richards; Rosaby. Go back down to the jury room. Miss Lawton;
8 Miss Wing; Miss Yuille; and Miss Oppedisano.

9 In Seat 1 will be No. 59, Michelle Pless-Joseph. In
02:01 10 Seat 2 will be No. 60, Jeffrey Earl. In Seat 6 will be No. 61,
11 Robert Colombo. In Seat 9 will be No. 62, Genna Fitzgerald.
12 In Seat 13 will be No. 63, Rachel Reagan. And in Seat 16 will
13 be Sheldon Ramdhanie, No. 64.

14 (SIDEBAR CONFERENCE AS FOLLOWS:

15 MR. CHAKRAVARTY: Can we have one minute?

16 Your Honor, the juror in Seat 6, No. 61. That's it.

17 MS. BASSIL: Okay. Juror No. 1 in Seat -- Juror No.
18 59, I think, in Seat 1. Is that Pless-Joseph?

19 THE CLERK: Yes.

02:06 20 MS. BASSIL: Seat No. 2, I think it's Juror 60,
21 Jeffrey Earl, correct? And Seat No. 9, Juror 62, it should be
22 Genna Fitzgerald.

23 THE COURT: So you're done. You've exhausted. You
24 have one.

25 . . . END OF SIDEBAR CONFERENCE.)

1 THE CLERK: The following jurors will be excused:
2 Miss Fitzgerald, Mr. Earl, Miss Pless-Joseph, Mr. Colombo.

3 In Seat 1 will be No. 70, Frederick Lendall. In Seat
4 2 will be No. 71, John Murphy. In Seat 6 will be No. 73,
5 Patricia Wong. And in Seat 9 will be No. 78, Frank Pennacchio.

6 MS. BASSIL: I'm sorry. What was the last one you
7 called?

8 THE COURT: Number 78.

9 THE CLERK: Seat No. 9.

02:10 10 MR. CHAKRAVARTY: Your Honor, Juror No. 78 in Seat 9.

11 THE COURT: That's Frank -- No. 78, Frank Pennacchio.
12 That's your last one. So we will vacate those two seats, 2 and
13 9, and they will be filled with people, and we will have a
14 jury.

15 . . . END OF SIDEBAR CONFERENCE.)

16 THE CLERK: The following jurors will be excused: Mr.
17 Murphy and Mr. Pennacchio. Go back down to the jury room.
18 Thank you very much.

19 In Seat 2 will be Juror No. 79, Susan Sorrento. And
02:11 20 in Seat 9 will be No. 80, Rupert McBean.

21 (SIDEBAR CONFERENCE AS FOLLOWS:

22 THE COURT: We'll take a break now, get rid of the old
23 ones, non-used ones. Paul will take a few minutes just to
24 give -- looks like we won't get to witnesses today.

25 MR. CARNEY: Will we have a break after Paul speaks

1 to --

2 THE COURT: That is the break. I don't think we'll
3 need a break between openings.

4 MR. CARNEY: No.

5 THE COURT: We'll just go straight through.

6 . . . END OF SIDEBAR CONFERENCE.)

7 THE COURT: Okay. We have completed the process, and
8 the 16 jurors now in the box will be the trial jury. The
9 remaining jurors who have not been fortunate enough to be
02:12 10 chosen will go back to the jury assembly room. We thank you
11 for your presence.

12 Now, to the members of the jury newly chosen, we're
13 going to take a -- we've finished the selection process. We're
14 going to take a short break now. The clerk will take you into
15 the back, into the jury room, where you will be spending a good
16 bit of time in the next few weeks. He'll give you a kind of
17 orientation of logistics that you may need to know as now
18 active, sitting jurors. It will take 15 or 20 minutes, I would
19 say, roughly. You'll have an opportunity to visit the
02:13 20 facilities and so on. Then we'll come back, and we'll begin
21 the presentation of the case to you. So we'll take a recess.

22 (Recess taken at 10:55 a.m.)

23 THE CLERK: All rise for the Court and the jury.

24 (The Court and jury enter the courtroom at 11:20 a.m.)

25 THE CLERK: Will the jurors remain standing; everyone

1 else be seated.

2 (Jury panel sworn.)

3 THE CLERK: Please be seated.

4 THE COURT: All right, jurors. We've had a lot of
5 proceedings involved in selecting you to be the trial jury in
6 this case. With the administration of the oath of office as it
7 were, you are now officially a jury and the trial has
8 officially begun. I'm going to give you a brief overview of
9 how we're going to proceed in the course of the case just to
02:40 10 now focus you a little bit on what the mechanics of the case
11 will be and some of the concerns you'll have, and then we'll
12 proceed with the beginning of the presentation of the case to
13 you by the lawyers.

14 As I'm sure you can appreciate, this is a very
15 important occasion for the parties to this case, both the
16 prosecution and the defense. They have been preparing for this
17 moment for some time, and they are now prepared to set before
18 you respectively their evidence bearing on the issues that are
19 presented. And we know that you will give it that very utmost
02:41 20 serious consideration and evaluation.

21 As you know, this is a criminal prosecution. The
22 government, by means of the indictment -- the indictment being
23 the document that sets out the charges in any criminal case --
24 presents a number of criminal charges against the defendant,
25 Mr. Tarek Mehanna. And I'm going to just review them for you.

1 It's not necessary for you to absorb all this precisely at this
2 point. At the end of the case, as you prepare to deliberate, I
3 will give you some very detailed instructions about the law and
4 the principles that have to be applied in a case like this
5 including specifically what we call the elements of any
6 offense, what the government must prove in order to establish
7 what the offense is that has been committed.

8 I remind you of something I told the group generally,
9 and that is, of course, this is a federal court and it arises
02:41 10 under federal criminal law, that being laws enacted by the
11 Congress to address particular issues the Congress has deemed
12 appropriate for criminal sanction. So they are, in a sense,
13 all artificial rules in the sense that they are created because
14 Congress saw a particular need for a statute to punish behavior
15 as described in the statute, so...

16 There are seven separate counts, or individual
17 charges, made against the defendant in this case. And as I
18 think I told you, they kind of fall into two groups. The first
19 four counts of the indictment pertain generally to what we
02:42 20 might call "providing material support to terrorists or
21 terrorism activities." And I'll come back to that. And the
22 last three counts relate to providing false information to law
23 enforcement personnel acting within the scope of their
24 responsibilities in the executive branch of the government.

25 So let me talk about the first group first. There are

1 four counts. That means there are four separate charges that
2 are made under different statutes. And some of this gets a
3 little involved, and as I say, I'll untangle it more precisely
4 at the end of the case, but just to give you the overview.

5 And before I get to the particular statutes let me
6 remind you again that some counts charge particular crimes;
7 that is, that the charge is that the defendant committed or
8 attempted to commit himself a particular crime. And in legal
9 parlance we call those "substantive offenses." Some of the
02:43 10 counts charge an illegal conspiracy with others to perform
11 illegal acts. And as I told you, and I remind you again, a
12 conspiracy is an agreement among people that they will act
13 together intentionally in order to bring about an unlawful
14 objective, often, the commission of a crime. So there can be
15 both a substantive crime committed and a conspiracy to commit a
16 substantive crime, and a defendant could be convicted of either
17 or both.

18 A quick illustration and a completely different
19 context: Someone might rob a bank. That would be a
02:44 20 substantive offense. Someone might get together with a couple
21 of his buddies and agree to go ahead and try to rob the bank.
22 That could be a conspiracy to rob the bank. That's the rough
23 distinction. So several of these counts allege conspiracy and
24 some allege other substantive offenses.

25 So Count 1 alleges a conspiracy to provide material

1 support or resources to a designated foreign terrorist
2 organization, particularly, al Qa'ida. The statute at issue --
3 I'll just read you the pertinent language of the statute so you
4 have an idea of what is prohibited. "Whoever knowingly
5 provides material support or resources to a foreign terrorist
6 organization or attempts or conspires to do so commits an
7 offense. To violate this paragraph, a person must have
8 knowledge that the organization is a designated terrorist
9 organization or that the organization has engaged in or engages
02:45 10 in terrorism."

11 For the purposes of that statute, "material support or
12 resources" means any property, tangible or intangible, or
13 service, including currency or monetary instruments or
14 financial securities, financial services, lodging, training,
15 expert advice or assistance, safe houses, false documentation
16 or identification, communications equipment, facilities,
17 weapons, lethal substances, explosives, personnel -- one or
18 more individuals who may be or include oneself -- and
19 transportation, but excepting medicine or religious materials.

02:46 20 As used in this definition the term "training" means
21 instruction or teaching designed to impart a specific skill as
22 opposed to knowledge, and the term "expert advice or
23 assistance" means advice or assistance derived from scientific,
24 technical or other specialized knowledge.

25 So this statute, which is Section 2339(b) of Title 18,

1 reaches only that material support for terrorist activity that
2 is coordinated with or under the direction of a designated
3 foreign terrorist organization. Independent advocacy of
4 policies or activities independent of the foreign terrorist
5 organization, even advocacy that might promote the group's
6 legitimacy, is not covered. The material support must be
7 support provided to, coordinated with or directed by the
8 foreign terrorist organization. That's the charge in Count 1.

9 I'm going to skip a couple of counts and come back to
02:47 10 them. There's another conspiracy alleged in Count 4 which is a
11 conspiracy to kill, kidnap or maim persons in a foreign
12 country. And the relevant statute here provides: "Whoever,
13 within the jurisdiction of the United States, conspires with
14 one or more persons, regardless of where such other person or
15 persons are located, to commit at anyplace outside the United
16 States an act that would constitute murder, kidnapping or
17 maiming if committed within the United States." So conspiring
18 in the United States with people to commit acts elsewhere
19 which, if committed here, would amount to murder, kidnapping
02:48 20 and maiming, that's a conspiracy count charged in Count 4.

21 There's one other statute that I want to call to your
22 attention -- two others, actually. But first I want to
23 call -- and this is not the subject of a -- well, let me come
24 back to it.

25 Section 2332 of Title 18 makes it an offense to kill a

1 national of the United States while such national is outside
2 the United States, and makes it a crime as well to attempt or
3 to conspire to kill a national of the United States outside the
4 United States.

5 So now moving back to Count 2. Count 2 alleges a
6 conspiracy -- let me get the right language -- in violation of
7 18 U.S. Code Section 2339(a). That statute provides, "Whoever
8 provides material support or resources" -- that's the same
9 phrase we heard before, "material support or resources" -- "or
02:49 10 conceals or disguises the nature, location, source or ownership
11 of material support or resources, knowing that they are
12 intended to be used in preparation for or in carrying out a
13 violation of a number of statutes" -- including the last two I
14 mentioned to you: conspiring in the United States to commit a
15 crime of murder, kidnapping and maiming under Section 956, or
16 attempting to kill -- or killing a person of the United
17 States -- who is a United States national outside of the
18 country. Those two are part of the statutes that are the
19 object of Count 2 and 3.

02:50 20 If a person provides material support and resources to
21 those kinds of conspiracies, to kill outside the United States,
22 or to kill a U.S. national outside the United States, that
23 itself is a separate crime, okay? The conspiracy is charged in
24 Count 2; an attempt to do so is charged in Count 3. So they're
25 very intertwined issues and we'll sort them out in more detail,

1 but those are the sort of material support that terrorism
2 charges in the case.

3 Counts 5, 6 and 7 relate to a different statute, which
4 prohibits a person from giving false information to officials
5 who are acting within the jurisdiction of the executive,
6 legislative or judicial branch of the government. Basically,
7 lying to federal agents is the summary of it. There are two
8 specific occasions when that's charged against Mr. Mehanna,
9 that he gave false information to an FBI agent, and there's
02:51 10 also a conspiracy charge, that he conspired with others to do
11 that. That's the range of criminal charges that are made.

12 Now, the defendant has pled not guilty to these counts
13 and he stands not guilty at this point. The trial will
14 determine whether the government's evidence is sufficient to
15 convince you people beyond a reasonable doubt that he has
16 committed any or all of the offenses he's charged with. And
17 that's what the evidence will be about.

18 Let me just say a word about how we're going to
19 proceed in the course of the case. When I finish this
02:51 20 introduction we'll begin with what we call the opening
21 statements by the lawyers. Each side has an opportunity to
22 stand in the well before you and give you an overview of what
23 they expect the evidence will be in the course of the case.

24 One of the principal purposes of the opening statement
25 is to give you kind of the big picture, so that as you hear

1 individual pieces of evidence come in in perhaps a somewhat
2 fragmented or disjointed way, you might have some bigger
3 picture that you can associate it with and it may have some
4 greater meaning to you why you're hearing this information.

5 The illustration I like to use for jurors is: The
6 opening statement is like the picture on the outside of the
7 jigsaw puzzle box. They get to say what it's supposed to look
8 like when you put all the pieces together. They will have very
9 different pictures, and it will be up to you to put whatever
02:52 10 pieces you think are reliable together and see what picture
11 emerges or doesn't emerge from that. But that's the general
12 purpose of opening statements, to give you the kind of overview
13 or context so it will help you understand the context of the
14 evidence as you hear it.

15 The openings by the lawyers are not part of the
16 evidence. If we stopped at the end of that, there would be
17 nothing to decide because we would have no evidence. The
18 evidence will come in the presentation through witnesses and so
19 on. And that will happen after the opening statements. I
02:52 20 expect we won't get any farther than opening statements today,
21 so probably tomorrow we'll begin with the first witness in the
22 case.

23 There will be testimony from witnesses who will come
24 to the courtroom. They'll take the witness stand right across
25 from you. They'll be questioned or examined by the lawyers,

1 each side taking turns with each witness. It's a rather formal
2 way of presenting information, and one aspect of the formality
3 is the question-and-answer format. We don't just have
4 witnesses come in and talk to you and say what they think you
5 ought to know; rather, their attention and their testimony is
6 directed by the questions put to them by the lawyers.

7 And there are a number of reasons for that. One is
8 simple efficiency. The lawyers can keep the witnesses on track
9 and get the information that pertains to these issues and not
02:53 10 have them wander off into things that don't matter. Another
11 reason is that we do exercise some controls over the kinds of
12 information that are properly put before a jury like yourselves
13 to make the decisions that you are required to make. We sum up
14 all those principles in the phrase "the rules of evidence," the
15 rules that govern the quality of evidence that is properly
16 presented in the case.

17 One of my functions in presiding over the trial is to
18 make whatever rulings about evidence if the need should arise,
19 and it usually does in a case. You've probably seen it. If a
02:54 20 lawyer thinks a question put to a witness calls for an answer
21 that would be something that should not be in evidence because
22 of one of the rules, the lawyer will object to the question and
23 object to the witness's answering it.

24 You should understand that that is not in any sense an
25 interference or an obstruction to the process; it is exactly

1 the opposite. The lawyer, by making an objection, is raising a
2 legitimate question about rules of evidence and asking that the
3 case be kept on track with those rules. And that's something
4 that we're all committed to. So it's not something to hold
5 against somebody who makes an objection; they're actually
6 helping us stay within the bounds that we're supposed to be
7 staying.

8 So when an objection is made, I will rule on it. I
9 may sustain the objection, meaning I agree that the evidence
02:55 10 called for should not be given. If that happens, the witness
11 won't answer the question. If that should be the case, don't
12 try to answer it yourselves. Don't try to guess what the
13 answer might have been if the witness had been allowed to go
14 ahead and answer it. Just take it that for whatever reason
15 there's no answer to that question, the question is now
16 irrelevant. Wait for the next question and the answer to that
17 because it's the witness's answers that supply evidence, not
18 the lawyer's questions.

19 I may, on the other hand, overrule the objection and
02:55 20 the witness will go ahead and answer the question. That answer
21 then comes into evidence. It's part of all the evidence you'll
22 have. It doesn't have any special meaning or significance
23 because it was an answer after an objection. In other words,
24 the objection isn't a little flag or a clue to you that, "Oh, I
25 should pay attention to that. They didn't want that to be

1 heard." That's not the case at all because the considerations,
2 the principles, the ideas that underlie the rules of evidence
3 have nothing to do with the merits of the case that you'll be
4 deciding. There's just no logical or other connection with
5 them, so don't look for any.

6 Occasionally, we may have to go to the sidebar to deal
7 with an objection or a point of law. We'll try to keep that to
8 a minimum. We ask you to bear with us if we have to do that.
9 The reason for it is sometimes I want to hear what the witness
02:56 10 would say if the question were answered. And if it might get
11 excluded and you wouldn't hear it, it's pointless to have you
12 hear it in the first instance and then have to go -- so I might
13 hear that to help me make a decision on the ruling. So we'll
14 do it at the side.

15 When we go to the side generally from here on, if we
16 do, we will probably play a little music to distract you so you
17 can't be eavesdropping on us. And so if you're all of a sudden
18 surprised by some piano music, that's part of the -- we have a
19 courtroom that has excellent acoustics and we just have to be
02:57 20 careful that we're protecting that.

21 So both sides get a chance to present whatever
22 evidence is relevant to the issues at hand. That will happen.
23 That will take some time, obviously. We've talked about that
24 in the selection process. At the end of all that the lawyers
25 get another chance to appear before you. Now you've heard all

1 the evidence and now they're going to sum it up for you and ask
2 you to consider it in various ways. Obviously, they're going
3 to ask you to consider it in a way that favors their point of
4 view in the case. At that point I'll give you some very
5 detailed instructions about the legal issues that I've kind of
6 given you an overview of today and then we'll ask you to
7 deliberate. So that's the format that we'll follow.

8 During the course of the presentation of evidence we
9 will permit you to take notes. We'll supply you with notebooks
02:57 10 and pens, and you can take whatever notes you think will be
11 helpful to you as an individual juror. It's not a requirement.
12 You don't have to take notes if you don't want to. My
13 experience in observing jurors is that some are very active in
14 jotting things down, some put the notebook on the floor and
15 don't use it. It is intended only as an assist to you
16 personally, so don't feel you have to do what your neighbor is
17 doing. But if you think it would help you to jot some things
18 down, we will give you the notes to do it. You only have the
19 notebooks for the evidence so you don't have them today because
02:58 20 we are only going to have, probably, opening statements at this
21 point.

22 So, with that, I think we'll ask the government -- the
23 order is the government will go first, followed by the defense.
24 And Mr. Chakravarty can have his chart back.

25 MR. CHAKRAVARTY: Thank you.

1 About ten years ago Osama bin Laden issued a call to
2 arms. Around the world he wanted Muslims to stand up and fight
3 Americans and their allies. He did so in many ways. He issued
4 videos, propaganda. You may have seen him on TV. There was a
5 particular video called "State of the Ummah." "Ummah," you'll
6 learn, means the Muslim world. And you'll hear in that video
7 he proposed the solution to the oppression and persecution of
8 Muslims as he and al Qa'ida perceived it to be about ten years
9 ago. And his solution was something called "Jihad."

02:59 10 You'll hear when Osama bin Laden used it, and later
11 when the defendant used that term, he was talking about
12 fighting and killing American soldiers, fighting and killing
13 Americans. And that call that Osama bin Laden issued about ten
14 years ago was one that resonated with the defendant. This case
15 is about how this man answered that call, and over the course
16 of the next ten years he tried and tried again to provide, as
17 the judge just told you, what's called material support to
18 al Qa'ida and other terrorists who were killing U.S. soldiers.
19 Simply agreeing to do that is against the law in this country.

03:00 20 My name is Aloke Chakravarty. I represent the United
21 States. With me is Jeff Groharing and Jeffrey Auerhahn. We're
22 the prosecutors. We're just lawyers. Seated behind us you'll
23 see Paul Bruemmer. He's also from my office. And throughout
24 the trial he'll be presenting some of the evidence on the
25 screens in front of you and helping us with the trial.

1 Seated in the front row of the gallery about halfway
2 in there's Heidi Williams and Tom Daly. They're FBI task force
3 agents. You'll hear that they investigated this matter.
4 Because when the defendant agreed to answer this call, he
5 didn't go to the media. This was a secret agreement. That's
6 what a conspiracy is and that's what the defendant did.

7 There were two principal ways in which the defendant
8 conspired to and tried to provide material support to the
9 terrorists. The first is easy to understand. The defendant
03:01 10 got on a plane; he went over to Yemen for the purposes of
11 getting terrorist training so that he could then personally --
12 him and two of his friends -- go on to fight U.S. soldiers
13 primarily in Iraq, because that's where U.S. soldiers were
14 principally engaged at that time. It was Super Bowl Sunday
15 2004. He wasn't interested in the game; instead, secretly,
16 without even his parents knowing, they went to Logan Airport,
17 lied to the people to get on the plane, and then flew off to go
18 to Yemen.

19 You'll hear, though, that about two weeks later the
03:02 20 defendant returned. He later said, in his own words, he didn't
21 find what he was looking for. He didn't find the terrorist
22 training camps that he was looking for. But he wasn't done.
23 About 2005 and 2006 he found something that he was capable of
24 doing that would provide material support to these
25 organizations, all from the comfort of his cushy bedroom in

1 Sudbury, Massachusetts. Because in today's day and age, ladies
2 and gentlemen, the Internet is everywhere. And in the same way
3 that Osama bin Laden was able to issue that call some five
4 years before, the defendant kept that call alive and he kept it
5 flourishing, and he started acting to help al Qa'ida on the
6 Internet.

7 How did he do that? Osama bin Laden speaks in Arabic.
8 When you're an American or you're somebody in the Western
9 world, you don't understand the words that he says. And so it
03:03 10 was the vital skill of translating complex Arabic, sometimes
11 not-so-complex Arabic, into English that the defendant
12 embraced. And what he then did was, along with others --
13 because that's what you need in a conspiracy. You can't just
14 do it yourself; you have to be working with others. You have
15 to have people of the same mind -- he then began translating
16 over and over again Jihad materials, for lack of a better
17 phrase, materials that would encourage people to participate in
18 Jihad which, by itself, was a service to al Qa'ida.

19 But even more so, when the defendant translated these
03:04 20 things and he published them and he distributed them and he
21 collected them all through the Internet, they had the label
22 "This is a production of al Qa'ida." He knew what he was
23 doing. He agreed to do it. As soon as he did, that became a
24 crime under the laws of the United States.

25 This case is not about what the defendant believed,

1 whether he was against the war or whether he didn't like
2 America. All of those things you can do in this country. What
3 you can't do is agree to do something that the law forbids.
4 And providing material support to terrorists and to al Qa'ida
5 is and was something that the law forbids, and that's why he's
6 in this courtroom today.

7 You'll hear, as the judge told you, that there are
8 essentially three sets of crimes here. There are crimes
9 related to the facts about the defendant's trip to Yemen, about
03:05 10 his desire to provide himself as what we call "personnel." You
11 may recall the judge said that when you provide yourself as
12 personnel to a terrorist organization or to terrorists, then
13 that is a form of providing material support.

14 You'll hear that also includes his two companions who
15 went with him to go to Yemen. And when they were helping each
16 other and had agreed to help each other get the terrorist
17 training that they were looking for, that's providing personnel
18 in the form of each other. That's also personnel. And those
19 are the criminal statutes that you're going to be considering
03:06 20 as you hear the evidence of the defendant's 2004 trip to Yemen.

21 The second set of facts that you should be listening
22 for during the trial is this translation service that he
23 offered. You'll hear that with a separate group of
24 individuals -- some of them overlapping -- later in time after
25 2004 the defendant, along with people that he had met primarily

1 on the Internet -- not all. Some of them were right here in
2 Massachusetts -- but with people he had met on the Internet,
3 people who also wanted to support the objectives and the goals
4 of al Qa'ida and the terrorists, to kill Americans, to get them
5 out of Iraq and Afghanistan -- it's one thing to want American
6 troops back home; it's another thing to actually help those who
7 are killing them when they're overseas. And that's what they
8 agreed to do on the Internet.

9 One of the things that the defendant did was he
03:06 10 translated a document called "39 Ways to Serve and Participate
11 in Jihad." This is essentially a training manual on how
12 somebody can get ready to personally get into the fight.
13 That's what the defendant was interested in doing. And after
14 he failed in being able to do that himself over in Yemen, he
15 wanted other people to do what he could not.

16 The final set of charges, the factual basis of the set
17 of charges, is lying to the government. In the defendant's own
18 words you will hear that lying to the FBI in a material
19 investigation, especially a terrorism investigation, about a
03:07 20 material thing is itself a crime. That's what the defendant
21 did not once but several times. It stands to reason if you go
22 to Yemen to get terrorist training, it's not something that you
23 would be eager to tell your family or to tell the FBI when they
24 come asking, and so he naturally lied about it.

25 But most of the case is going to be about the

1 conspiracy: what his intent was in getting involved in the
2 conspiracy; what the other conspirators, the people who
3 participated with him in the conspiracy -- what the objective
4 was, what they had actually agreed to do. And that's why the
5 government will be presenting evidence of what the defendant
6 and the other conspirators' intent was. What, in fact, they
7 had agreed to do.

8 You'll hear that they agreed to provide material
9 support to al Qa'ida. That's one of the charges. The second
03:08 10 charge, as the judge mentioned, is that they agreed to provide
11 material support to those who were killing American soldiers
12 overseas. Now, some of them could have been al Qa'ida, but
13 even if it wasn't al Qa'ida, if they were participating in the
14 killing of American soldiers, then that's what's captured under
15 the second count. They had agreed to provide material support
16 to those people.

17 You'll also hear that in their trip over to Yemen and
18 in their translation materials that they distributed, that was
19 actually an attempt to provide the material support. These are
03:09 20 actions that the defendant took to try to provide material
21 support to these organizations.

22 And then finally, they had agreed to lie. They agreed
23 to conceal the information about what they had tried to do to
24 provide material support. Each one of those is a conspiracy
25 charge which means you're not going to be asked to find

1 whether, in fact, they did provide the support to al Qa'ida,
2 whether there was a check in the mail saying, "Thank you for
3 your support." That's not the question here. The question is
4 whether there is sufficient evidence to prove that they had
5 agreed to do that. And I'd suggest to you the evidence will be
6 much stronger than that. There will be a lot more evidence
7 that they actually carried through with what they had intended
8 to do.

17 In terms of his translation work and the things that
18 he did on the Internet to spread this propaganda, to encourage
19 people to go fight in Iraq and Afghanistan and against the U.S.
03:10 20 soldiers and its allies, there are other forms. One of those
21 ways, as I mentioned, is personnel because you're encouraging
22 people to go fight. But the other way is that it's a service
23 to al Qa'ida when you're performing translations for them.
24 When you're making their material, their recruiting material,
25 their terrorism material -- when you're making it more

1 accessible to people all around the world, that is a vital
2 service that you are offering to al Qa'ida, and that is exactly
3 what the defendant did. And he was proud of it, the evidence
4 will show. But it's also a function of his expertise in
5 knowing Arabic so well that he was capable of translating
6 voluminous documents sometimes, sometimes videos where people
7 are speaking in tongues that are not familiar to most people.

8 Now, you may ask yourself in relation to the
9 translations, how can simply providing a translation of
03:11 10 something -- which is not inherently criminal. If you know
11 another language, then you can clearly translate something into
12 another language. You're not breaking the law. But it's when
13 you're providing a translation in coordination with a terrorist
14 organization, in this case al Qa'ida, or the terrorists who
15 were actually killing American soldiers, when you're doing it
16 for that purpose, then it is against the law.

17 This case is not about what the law should be, it's
18 about what the law is. And you're not allowed to provide
19 material support whether it's through your words, through your
03:12 20 guns, through your personnel. You're not allowed to provide
21 material support to those organizations or those individuals.
22 And that's what the defendant did.

23 The final set of charges, I explained to you, are
24 about the defendant's lies. And I'm going to tell you a little
25 bit more specifically about what those lies were. The first

1 set of lies, you'll hear, involve when the defendant went to
2 Yemen, he had agreed with some of his friends to come up with a
3 cover story, a story that if anyone asked, especially at the
4 border when he's coming in and out of the country, "This is the
5 reason why we are going." Of course, if he said, "We're going
6 to a terrorist training camp," he may not have been able to
7 board that plane, so he didn't. He lied. When he came back,
8 he lied. He said he went to try to go get some -- some kind of
9 school.

03:13 10 When the FBI approached him in December of 2006 and
11 said, "Hey, we noticed you went to Yemen. Why did you go?" he
12 came up with the same lie that he had agreed with his friends
13 to give. And again, that was against the law. But the other
14 lie, and this one will start to get into the precise facts of
15 the case, involve one of his very close associates. He had a
16 friend, somebody who he later called his best friend, named
17 Daniel Moldanado. And in December of 2006 when the FBI came to
18 talk to the defendant and they had finally uncovered this
19 secret conspiracy that for a long time the defendant was able
03:13 20 to participate in without the government being aware of, and
21 the FBI started to ask him questions about it, one of the
22 people the FBI asked about was if the defendant knew where his
23 friend Daniel Moldanado was. And, of course, the defendant
24 said that his friend Daniel Moldanado was over in Egypt and he
25 was working at an Internet company and he hadn't spoken to him

1 in a few weeks.

2 Now, the FBI knew that that was a lie. The defendant
3 knew that that was a lie. Because at that time
4 Daniel Maldonado was in Somalia with a man named Omar Hammami.
5 And they were receiving training from al Qa'ida so that they
6 could fight in Jihad, the very thing that the defendant and
7 Mr. Maldonado had talked about for years before that as they
8 were answering the call that Osama bin Laden had issued them.

9 And you'll know that that was a lie, ladies and
03:14 10 gentlemen, because three days before this conversation with the
11 FBI where the defendant lied to the FBI about Mr. Maldonado,
12 Mr. Maldonado called the defendant from Somalia inviting the
13 defendant to come join him to do what they had talked about
14 doing for so many years. He used the phrase, "I am making
15 peanut butter and jelly," which, ladies and gentlemen, did not
16 mean making sandwiches; that was a not-so-coded reference to
17 something the defendant used over and over again. "Peanut
18 butter and jelly" was a reference to fighting in Jihad. The
19 defendant later -- and you'll hear some of the evidence of
03:15 20 that -- acknowledged, not to the FBI, but he acknowledged to
21 his friends, that he had a problem because he knew he had lied
22 to the FBI about that conversation with Daniel Maldonado.

23 You'll hear that those lies were material, which is an
24 element of the offense which I'm going to tell you about now
25 because it's going to be a while before we're able to talk

1 again. "Materiality" means was it something that could have
2 made a difference to the FBI as they were investigating this
3 matter. And the evidence will show that it could have made a
4 difference, both to the FBI agents who were investigating the
5 defendant, his trip to Yemen and anything else that he was
6 involved in intentionally related to terrorism, as well as the
7 investigation of Mr. Maldonado who was over in Somalia at that
8 time, as well as the investigation of Mr. Hammami who was over
9 in Somalia at that time, as well as others, but by the
03:16 10 defendant lying to the FBI, they were unable to ask those next
11 questions.

12 Now, most of this case, ladies and gentlemen, will
13 focus on what the defendant's intent was because the evidence
14 will come in that the defendant went to Yemen, that he
15 translated these materials. So most of the dates in this case
16 will revolve around: What was the defendant thinking? What
17 was his coconspirator thinking? And for that reason you're
18 going to see, and you're going to hear, a lot of the evidence
19 about what the defendant was saying out of his own mouth, but
03:17 20 also what the defendant was consuming, what he was reading,
21 what he was watching. Because that all goes into what he was
22 thinking at that time. This case is not about -- it's not
23 illegal to watch something on the television. It is illegal,
24 however, to watch something in order to cultivate your desire,
25 your ideology, your plots to kill American soldiers, or to help

1 those, as in this case, who were.

2 One of the ways the defendant did that was he harkened
3 back to those successes where al Qa'ida was successful in doing
4 what it is that he wanted to do. This is one example -- one of
5 the things that's going to be offered to you simply to show
6 what the defendant was thinking.

7 The defendant, you'll hear, had dozens of photographs
8 about Jihad, about September 11th, about Osama bin Laden, about
9 other things related to fighting Americans on his computer and
03:18 10 in other places. One of the things you'll see that was found
11 on his computer and also in his email was this picture of the
12 defendant at Ground Zero in New York where the Twin Towers
13 fell. This is the defendant on the left with an ear-to-ear
14 grin holding his finger up.

15 When the defendant visited Ground Zero, which he did
16 repeatedly, he wasn't going for the reasons why you might
17 think. He was going to celebrate what happened on that day.
18 And that's important for you to know not because he's charged
19 with committing some offense related to 9/11, but because you
03:18 20 know what he was thinking when he committed the crimes that he
21 did do in this case: why he went to Yemen, why he was
22 translating these things, why he penned the phrase, "On that
23 morning you became our hero, the day you turned Twin Towers
24 into Ground Zero."

25 That is the defendant before you. And the reason why

1 it's going to be offered is not to appeal to your sympathies or
2 to say, "Well, if he's anti-American then he must be guilty."
3 We don't want you to do that. This is a court of law, and it's
4 the law and it's the facts that should decide. Your sympathies
5 for the defendant, for the government has no place. What
6 you're going to be tasked to do at the end of this case is to
7 decide what was the defendant and his coconspirators thinking
8 when they committed the acts, when they did the deeds in this
9 case.

03:19 10 Because it's federal court, ladies and gentlemen, this
11 isn't about what the law should be. You're not going to
12 determine what the law should be. We're not politicians; we're
13 lawyers. Our role is simply to present evidence to you. And
14 it's that evidence that is going to determine whether you find
15 facts sufficient to find the defendant guilty beyond a
16 reasonable doubt on the charges.

17 So I want to map out what that evidence will be, what
18 kinds of sources of evidence and what it will look like, as you
19 assess what was the defendant thinking as he engaged in the
03:20 20 conduct to support al Qa'ida and the terrorists when he was
21 answering that call for support.

22 Now, one of the things you'll hear about is what we
23 call physical or documentary evidence. This is essentially
24 evidence that you typically can feel or touch, but in this
25 modern electronic courtroom you might have to see it on the

1 computer; but nevertheless, these are exhibits. These are
2 things that you can see that will help you assess both what the
3 defendant personally did as well as what was in his state of
4 mind, what he was thinking as he was engaging in this conduct.

5 Many of those things will be the defendant's own
6 statements. We call that direct evidence of what the defendant
7 was thinking. A lot of it will be what we call circumstantial
8 evidence. It's no less powerful; it's just less direct. It's
9 not necessarily what the defendant was personally saying, but
03:21 10 it's based on his actions or it's based on what someone was
11 saying with him that you're able to figure out what they were
12 talking about. There will also be items like this and other
13 things that show what this defendant was obsessed with at that
14 time. In this case, ladies and gentlemen, that was
15 participating in Jihad, something that he felt was a duty,
16 something that was obligatory, to take up arms against the
17 United States.

18 So the first source of that evidence that you're going
19 to hear about, I'd say probably tomorrow, is a court-authorized
03:22 20 search of the defendant's own room. I mentioned to you before
21 when the defendant was engaged in this conspiracy -- or these
22 conspiracies -- he wasn't doing it openly; he was doing it
23 secretly. The FBI didn't know all of these things as it was
24 occurring. But they caught on. And by 2006, in August, you'll
25 hear when the defendant and his family went over to Egypt where

1 he has family, the house was vacant, the FBI got a court order,
2 and they went in and they searched the defendant's room.

3 And it was at that time, ladies and gentlemen, that
4 you'll hear that they were able to make an exact copy of the
5 defendant's computer, they were able to photograph a number of
6 pieces of evidence that were in the defendant's room, and they
7 put it all back so the defendant wouldn't know that they had
8 actually searched the room.

9 At that time, in August of 2006, you'll hear the
03:22 10 defendant was over in Egypt. He wasn't just there with his
11 family, though, ladies and gentlemen. That man I mentioned a
12 little while earlier, Daniel Maldonado? He met with
13 Daniel Maldonado in Egypt. He met with Omar Hammami, the other
14 guy who went to Somalia to go fight, in Egypt. They told him
15 they were interested in going over to Somalia at that time.
16 The defendant ultimately came back from his trip to Egypt and
17 he continued his activities.

18 The second source of evidence that you'll hear about
19 is the computer that was seized on that day was a treasure
03:23 20 trove, invariable library of information about Jihad. You'll
21 see he had Jihad videos. Some very graphic, disturbing scenes
22 of the objective of what the defendant was trying to do in his
23 conspiracy, which is to kill Americans. You'll see a lot of
24 al Qa'ida propaganda. You'll see photographs like this, or
25 like these, which are symbols of al Qa'ida which are the

1 symbols that he used in the propaganda that he later
2 translated, that he later published and disseminated across the
3 world. These are the symbols of al Qa'ida and Iraq, and you'll
4 see they were on some of his very own translations.

5 But in addition to just images and videos and
6 articles, you'll hear that that computer had stored
7 communications. Modern al Qa'ida and modern society is built
8 on the Internet. It's the function of E-commerce. It's how a
9 lot of these organizations operate. It's no less true for
03:24 10 either al Qa'ida -- it's no less true for all of us. And
11 there's a function on the Internet called "instant messaging,"
12 or "chatting," it's frequently called. You may have heard of
13 email. It's similar to email except it's real-time.

14 Those instant message communications are not always
15 stored. But the defendant did, in fact, store those
16 communications. Not every one, but for a six-month window
17 there were hundreds of communications that the defendant
18 engaged in conversations with the coconspirators in this case
19 and others around the world talking about the things that are
03:25 20 relevant to what your inquiry is going to be: Why did he go to
21 Yemen? Why was he conducting these translations? How was he
22 trying to support al Qa'ida?

23 And those hundreds of communications we're going to go
24 through. We're not going to read the entirety, although you'll
25 have them, but we're going to focus in on the relevant portions

1 of those communications, juxtapose those with other relevant
2 information evidence that has been obtained in this case so
3 that you can understand that when the defendant was engaging in
4 these activities, in his own words he's talking about the
5 activities, the crimes that he was committing.

6 Fourth, you'll hear about the emails of the defendant.
7 Just like those stored instant message chats, you'll hear that
8 there were emails. Now, the emails were obtained through
9 what's called a court-authorized interception and search of
03:26 10 emails. What that means is that around the same time that the
11 FBI was able to search his room, they also obtained
12 authority -- legal authority -- to intercept the defendant's
13 emails. And you'll see several of those emails, again, saying
14 in the defendant's own words what he was thinking.

15 One of the themes as you go through all of these
16 stored communications you'll see is that the defendant was
17 worried about what law enforcement might have found out, what
18 they may have known about his activities. And so he was cagey.
19 So he was a little cautious in his words. He would use coded
03:27 20 phrases sometimes like "peanut butter and jelly," for example,
21 in case somebody who was listening on the other end of the
22 email or the instant message might be working for the
23 government.

24 You'll hear another source of the evidence were
25 court-authorized wiretaps of the defendant's telephone calls.

1 You're not going to hear very many calls, but you're going to
2 hear that same kind of caution, that same concern that somebody
3 from the FBI was listening to his phone calls. So he was
4 always talking around things, but he didn't talk around things
5 enough that the FBI wasn't able to determine what he was
6 talking about, get the evidence, and now we're presenting it to
7 you.

8 A theme throughout the case is you are the judges of
9 the facts. You are going to be assessing this evidence. It's
03:27 10 not what I say about it; it's not what the FBI agents say about
11 it; it's not what the media; it's not what the public says
12 about it. You are the only ones who are going to have the rare
13 window into what the defendant was thinking, what he was saying
14 and what he did that's going to be presented over the next
15 several weeks here in this courtroom.

16 Another source of evidence you're going to hear about
17 in this case, ladies and gentlemen, is the activity that the
18 defendant did on the Internet itself. In addition to his own
19 communications you're going to hear that search warrants were
03:28 20 executed on a website. The website was called "At-Tibyan
21 Publications." And that was the website through which the
22 defendant distributed many of the things that he translated for
23 al Qa'ida. You'll hear that this was an extreme website where
24 they believed that Jihad against American soldiers was the
25 solution. You're going to hear that it was password-protected

1 so it wasn't that everybody could get on this website; you had
2 to be selected. You're going to hear that the defendant was a
3 moderator on that website. He actually sometimes would select
4 who gets to be on the website. And you're going to see some of
5 the things that he published and distributed through that
6 website.

7 The website became a virtual conference room where he
8 and others who had agreed to help support al Qa'ida and
9 terrorists could gather on the Internet. And that's why you're
03:29 10 going to be seeing some of that evidence. Some of that
11 evidence is, as I mentioned before, things like the "39 Ways to
12 Serve and Participate in Jihad." You'll see at the bottom it
13 says -- you can't see it from here but you will later. It says
14 "At-Tibyan Publication." It was published by these people.

15 Another thing you'll see that he published on the
16 Internet is some of the Jihad translations themselves. And for
17 this we have a little bit of video which I'm going to ask
18 Mr. Bruemmer to cue up.

19 THE COURT: Before he does that let me just say,
03:30 20 jurors, you all have monitors. You'll see them in the front
21 row. In the back row, between every other seat or so, there's
22 a console. And if you lift the top you can rotate up and out a
23 monitor and turn it on. So you can see if -- the on/off
24 switches should be in the lower right-hand corner. They should
25 be on.

1 MR. CHAKRAVARTY: Ladies and gentlemen, what you're
2 about to watch is one of the things -- I'll wait for you to get
3 situated. I'm sorry.

4 THE COURT: Make sure everybody has them up. You're
5 not getting an image yet because I haven't cued you yet.

6 MS. BASSIL: Can we get it?

7 THE COURT: I haven't done it yet. I want to make
8 sure they're all in place first.

9 Are you getting a little track? Okay.

03:30 10 MR. CHAKRAVARTY: One of the items that the defendant
11 translated for al Qa'ida was a document -- or excuse me -- a
12 Jihad video, a video that was designed to inspire people to
13 help participate in Jihad, a video specifically called the
14 "Expedition of Shaykh Umar Hadeed." The name is not important
15 except to know that it's about this person who was a terrorist
16 leader in Iraq at that time.

17 The defendant translated what was an Arabic-language
18 video encouraging support for the people who were killing
19 American soldiers, specifically in Iraq at that time, and he
03:31 20 translated -- he put subtitles in it so that they would be in
21 English. They also did some video editing so it would have
22 some graphics at the beginning, and they would have -- it would
23 make it pretty and easy to digest, again, making it more
24 accessible. He's providing a service to the terrorists who are
25 trying to get this video out.

1 And in that context the defendant, along with some
2 other people from this At-Tibyan Publication website, around
3 the world, they put this thing together. And you'll see some
4 of the evidence that not only was this video on his computer
5 when his room was searched in August of 2006, but he also had
6 the Arabic version, the original version, on his computer at
7 the time. And you'll also see that his note, his translations
8 in document form were also found later on his computer.

9 So with that I wanted to play -- it's about an
03:32 10 hour-some-odd-long video. We're not going to spend that time
11 today watching it, probably not for the rest of the trial, but
12 we tried to select specific clips. And with that, let me play
13 this one.

14 (Video published to the Court and jury.)

15 MR. CHAKRAVARTY: Ladies and gentlemen, that was the
16 beginning, a portion in the middle and the end of that video.
17 You'll see very clearly in the defendant's own translation that
18 he was producing things for al Qa'ida, that he viewed himself
19 as part of the media department of al Qa'ida. When he did
03:34 20 this -- imagine reading that without any subtitles. By putting
21 those subtitles in, by translating it, he was providing a
22 service to al Qa'ida. And Osama bin Laden told you what that
23 service was: It's for Jihad which, to them, meant killing; it
24 meant bullets; it meant martyrdom. That's what the defendant
25 wanted to do. And when he agreed with others to do it, he

1 broke the law.

2 Specifically with regard to his work on At-Tibyan
3 Publications doing this translation, you're going to see more
4 evidence. Another source of evidence you're going to hear
5 about is evidence from the United Kingdom, from England.
6 You're going to hear that a few of his collaborators on several
7 of the translation projects were from the United Kingdom. And
8 you're going to hear that in August of '05 those individuals
9 received communications from al Qa'ida asking to have certain
03:35 10 things translated by the brothers at At-Tibyan Publications,
11 which you just saw from. A month later there was a specific
12 request to translate one of these types of Jihad videos.

13 A month after that the defendant was personally
14 solicited by what was called "the cloud people." Now, "the
15 cloud people" may not mean much unless you know that in Arabic
16 "cloud" means "Sahab." And that word, "Sahab," is important
17 because "Sahab" is the media wing of al Qa'ida. "The Cloud
18 People" are those people who were the media wing of al Qa'ida,
19 and they asked the defendant to translate something.

03:35 20 Specifically, at that time they asked him to translate a
21 message from the number-two person -- at the time number-two
22 person of al Qa'ida, Dr. Ayman al-Zawahiri. And he had issued
23 a message to the people of Pakistan which the defendant was
24 asked to translate into English.

25 So he knew not only because it's in the videos that he

1 translated himself, but he was personally being solicited to
2 translate things for al Qa'ida. *Al Sahab*, by the way, it was
3 also the publisher of that video which, back ten years ago that
4 the defendant watched that he was answering this call about,
5 that when Osama bin Laden says the solution is to fight, they
6 also produced that video. So he personally knew the
7 effectiveness, the importance of engaging in this kind of
8 material support for al Qa'ida. After getting that request
9 from *Al Sahab*, you'll hear that the defendant, then, began
03:36 10 translating a number of projects, including discussing the
11 specific project about this message to Pakistan.

12 The final source of the exhibits that you're going to
13 see are the defendant's own recorded statements. And there are
14 two ways that you're going to hear the defendant's own voice
15 aside from the telephone calls which I mentioned to you before.
16 One is that during the FBI investigation, as they were
17 developing more evidence about the defendant, they were able
18 to, with a court order, put a bug, which is a colloquial phrase
19 for a recording device, into a location where they knew the
03:37 20 defendant was going to be. And they only activated it once,
21 and it was for a very brief time, but it happened to be the day
22 after the defendant called his friend -- or excuse me --
23 received a call from his friend from Somalia, Daniel Maldonado.

24 The day after that he met with another one of his
25 local friends, one of the people that he talked about Jihad

1 with on a regular basis. Not in open. The community may not
2 have been aware that that's what these guys were talking about.
3 But the few -- secret few -- who were a member of that
4 conspiracy, this is what they talked about when they got
5 together. And that bears out in a recording. A very poor
6 recording, I should add, that you're not going to be able to
7 make out much about, but you're going to be able to follow
8 along with a transcript. And the important thing is that the
9 defendant confirmed to the person he was with, one of his
03:38 10 coconspirators which I'll tell you about in a second, that he
11 just received a call from his friend Daniel Maldonado who was
12 over in Somalia with his friend Hammami, who he knew by his
13 nickname of al-Mizzi. And that's going to be the type of
14 evidence that will corroborate for you the fact that the
15 defendant had been lying to the FBI about what he
16 knew -- sorry -- he actually lied three days later to the FBI
17 about that telephone call.

18 The other source of the defendant's own words, own
19 recordings that you're going to be able to hear and follow
03:38 20 along with are that there were three people who went on that
21 trip to go to Yemen back in 2004: There was the defendant, one
22 of his friends named Ahmad Abousamra, and one of his friends
23 named Kareem Abuzahra. The names are very similar. I'm going
24 to put them up on the easel in a second.

25 But Kareem Abuzahra, a few months before that

1 recording, was approached by the FBI. And you're going to hear
2 that consistent with the plan they had agreed to, they were
3 going to lie to the FBI about why they went to Yemen. And
4 that's what Abuzahra did. But Abuzahra didn't just stop there.
5 Eventually he came in -- he got a lawyer, he came in, and he
6 said, "I want to tell the FBI, the prosecutor, what happened."
7 And so we gave him what's called immunity. You're going to
8 hear immunity means, at least in his case, that if you tell us
9 the truth, we're not going to prosecute you. And that's what
03:40 10 we did. As part of a condition of that immunity, you'll hear
11 that Mr. Abuzahra agreed, because he had to for the immunity,
12 to wear one of those bugs, one of those recording devices, on
13 his person when he then went to go talk to the defendant.

14 Now, keep in mind, ladies and gentlemen, this is
15 December of 2006 when Abuzahra goes to talk to the defendant.
16 Abuzahra had not had conversations with the defendant --
17 substantial conversations with the defendant -- much between
18 when they went to Yemen -- on their trip to Yemen until this
19 time. And very few people had open conversations about their
03:40 20 trip to Yemen.

21 And so in 2006 the defendant had already committed his
22 crimes; he had already conspired to provide himself as
23 personnel; he had already done this translation work on the
24 Internet.

25 After the fact Abuzahra went to talk to the defendant

1 and Abousamra, the third member of that trip, about what had
2 happened in the past. And you'll hear in the defendant's own
3 words, and you can follow along in the transcript, how he
4 acknowledged many of the events that we talked about today:
5 about the trip to Yemen, about lying to the FBI, about his
6 conversation with Daniel Maldonado.

7 And that's, in a broad overview, the types of exhibits
8 that you will see. They all go to what the defendant was
9 thinking and what he did when he engaged in his trip to Yemen
03:41 10 when he did his translation work. They will establish the
11 facts that he provided material support to terrorists.

12 Ladies and gentlemen, you can disregard virtually all
13 of the documentary and physical evidence in this case because
14 you will still have what's equally important, perhaps even more
15 important: testimony of witnesses. Testimony of witnesses is
16 evidence. And it's powerful evidence about what the defendant
17 was thinking because they will tell you what he said, they will
18 tell you what they agreed upon, they will tell you what they
19 did together. And that is evidence that you should consider
03:42 20 with equal weight.

21 So with that, I want to introduce you to some of these
22 witnesses. Ladies and gentlemen, this is the defendant and his
23 personally selected associates. These were the people, most of
24 whom grew up in the suburbs of Boston, who, over a period of
25 about ten years, were secretly planning and plotting to attack

1 U.S. interests, American soldiers and their allies. They were
2 figuring, "How can we help those people who are killing?"

3 The defendant, Ahmad Abousamra and Kareem Abuzahra,
4 agreed to go to Yemen. They wanted to get that terrorist
5 training back in 2004. But that wasn't the first step. That
6 wasn't their first attempt at trying to do something together.
7 You're going to hear that after that call to arms by al Qa'ida
8 they resolved that they wanted to do something to participate
9 in Jihad, that they needed to do something. It was obligatory
03:44 10 on them to fight. There were Muslims dying around the world
11 and they felt it was their job to exact revenge.

12 So one of the things they did after September 11th,
13 after the United States went into Afghanistan, they wanted to
14 go fight the Americans where they were. Abousamra, you'll
15 learn, in 2002, with the support of the defendant Abuzahra,
16 personally went to Pakistan in order to get the terrorist
17 training that they later went to Yemen to try to get.

18 Before they went, you'll hear that they met with one
19 of their other close confederates, this man, Hassan Masood.
03:44 20 You'll hear Mr. Masood has relatives in Pakistan who run
21 terrorist organizations. And so they naturally asked him, "How
22 do we get to the terrorist training camps in Pakistan?"

23 Abousamra went and he returned. He told them that he
24 had failed, he was unable to get in, but he had a lead. He had
25 met somebody. He had met somebody named something like

1 Abdul Majeed or Abd-al Majeed. They affectionately called him
2 "John" in case somebody was potentially listening to their
3 conversations. And they kept in touch with John who was over
4 in Pakistan in case there was an opportunity to go back and get
5 the training that they were seeking. And that's exactly what
6 Abousamra did again later on that year. He went back to
7 Pakistan.

8 Now, Abousamra is not Pakistani. Abousamra, you'll
9 learn, is Syrian. And he's the one person on this chart that
03:46 10 you're not going to hear from. You're not going to hear from
11 him because after the FBI started asking him questions about
12 what he had done in Yemen, two weeks later he left the country
13 for Syria. He hasn't been back since. So you're not going to
14 hear from him. But he went again to Pakistan; he again came
15 back and said, "They wouldn't take me because I'm not
16 Pakistani." There was just too much attention at these
17 terrorist training camps over in Pakistan at the time. You'll
18 hear, though, that that didn't deter them. Even though they
19 had tried and failed, they then turned to what else they might
03:46 20 be able to do to engage to provide material support.

21 You'll hear that in 2003 they actually considered
22 engaging in domestic terrorist attacks. You'll hear that they
23 considered the logistics and the practicality of attacking a
24 shopping mall. You'll hear that they took steps to actually
25 act on that. You'll hear that they planned to attack Hanscom

1 Air Force Base, a military target, a more appropriate target.

2 You're going to hear that they even talked about other things
3 that they ruled out as not viable.

4 It was only after that -- it was after the U.S.
5 invaded Iraq that they finally said, "We need to go over there.
6 We need to fight. We need to get the training." And they met
7 another contact online, this man, Abu Omar. You're going to
8 hear that Abu Omar, also named Jason Pippin -- he uses the name
9 Abu Omar, you'll hear is -- "Abu" is a common nickname -- or
03:47 10 "kunya," they call it, which is an alternate way of identifying
11 themselves.

12 And Abousamra, with the help of the defendant and
13 Abuzahra, went out to meet with Abu Omar to get direction on
14 where they should go in Yemen to get the terrorist training.
15 Abu Omar by then had distanced himself from Jihad. And he
16 said, "I can't tell you where the terrorist training is, but I
17 can tell you who to talk to."

18 Abousamra came back and they began preparing. They
19 began hiking. They bought stuff like backpacks. They made
03:48 20 arrangements to meet at the defendant's house on February 1st,
21 or the day of the Super Bowl, without telling his parents,
22 without telling anybody else. And they met with Hassan Masood
23 on that day. And then in silence, quiet, the defendant gave
24 his brother, who's seated in the courtroom -- he gave his
25 brother a bag of Jihad materials, he gave him a note, they got

1 in the car and they went to Logan Airport, and then they headed
2 off to Yemen.

3 You'll hear in the defendant's words what happened in
4 Yemen. You're going to hear what he told Abousamra, you're
5 going hear what he told others, you're going to see his
6 communications on the Internet, and then you're going to hear
7 the recorded conversations. But you're going to hear that
8 Abuzahra didn't make it all the way to Yemen with Abousamra and
9 the defendant. Abuzahra got an email when they were laying
03:49 10 over in the United Arab Emirates. And it was from his family.
11 And he had a wife and a child and he had a good job. And the
12 email said, "Please come home. Your father is sick." And
13 that's what he did. And he returned. He didn't go on with the
14 defendant and Abousamra. He didn't go on to Yemen; he came
15 back. And then, as I explained earlier, he started to distance
16 himself from the defendant and Abousamra.

17 You'll hear that as he began to distance himself these
18 other people began to -- the defendant brought these other
19 people closer to him. You're going to hear that that's when
03:49 20 the defendant began his translation work. That's when he
21 started using people on the Internet. That's when he started
22 talking to younger people like Ali Aboubakr, to converts of
23 Islam like Daniel Spaulding and Daniel Maldonado, and he tried
24 to sway them as to what the real path was: the path toward
25 Jihad.

1 You're going to hear that, for example, when he talked
2 to Ali Aboubakr one time -- he had just picked up a book in the
3 Harvard Coop about Osama bin Laden. And in talking to Ali
4 Aboubakr he described Osama bin Laden as, "I look to him as
5 being my real father. I love him more than I did before
6 without exception. I have been following him for six years.
7 From the moment I saw him, the hair on my arms stood on end
8 without even knowing who he was. He's the reason I started
9 practicing." That's what he's telling this young man, Ali
03:50 10 Aboubakr, the man you're going to hear from.

11 Every one of these defendants, except Maldonado, has
12 received some sort of assurance that the government will not
13 prosecute them. You're going to hear from Mr. Maldonado
14 because eventually he was attacked when he was in Somalia
15 because he was fighting in Jihad. He was captured. He was
16 brought back to the United States. He pled guilty to obtaining
17 military-type training from a terrorist organization,
18 al Qa'ida. And he's serving ten years in jail right now. And
19 as part of the condition of that agreement that he's serving
03:51 20 ten years in jail for is that he will come in to this courtroom
21 and testify truthfully about his communications with the
22 defendant, Tarek Mehanna. And one of the things he'll tell you
23 is about that phone call that he made from Somalia to the
24 defendant himself.

25 Now, at the risk of belaboring time and speed up a

1 little bit here. Now, the defense, I expect, will do their job
2 to zealously advocate for their client. And in doing so, they
3 will cross-examine each of these witnesses and they will
4 vigorously try to poke holes in their story. And as they do,
5 ladies and gentlemen, I want you to stay focused on the
6 important facts that these witnesses say. Not what the fringes
7 are, not what their biases might be, but the fact that they are
8 coming in here and what they're telling you about what the
9 defendant actually did, what he actually said.

03:52 10 And I submit to you that together they will paint a
11 picture about someone who even then, after he had already
12 committed the crimes with which he's charged here, that he
13 continued to support the objectives that he had supported for
14 the last ten years, to support al Qa'ida, to answer that call
15 that Osama bin Laden issued.

16 Now, the sequence of the trial, to map that out for
17 you a little bit, will be -- the beginning of the trial, over
18 the next few days we're going to go through and explain to you
19 what each of these sources of evidence are that I've just
03:52 20 described generally, where they are from, so that you can have
21 confidence that these are reliable sources of evidence. And
22 you're going to hear about his computer; you're going to hear
23 about the search in his house; you're going to hear about the
24 emails; you're going to hear about the telephone calls. And
25 we're going to lay that foundation. After that foundation is

1 in, then you will start being able to actually see some of
2 these communications, see some of the materials that were on
3 his computer, see some of the things that he translated, and
4 you'll hear from these witnesses who will tell you what he did
5 and why he did it.

6 Intermixed you'll hear from FBI agents and others who
7 will read some of the communications of the defendant. They'll
8 put -- juxtapose the communications of the defendant in along
9 with some of the other evidence. And throughout the trial you
03:53 10 will be able to make the assessment of what the defendant was
11 doing and why he was doing it. And I submit to you, ladies and
12 gentlemen, that when you do, you'll find that this case is not
13 about the defendant being un-American, of having unpopular
14 thoughts, but it's about what he tried to do to support the
15 people who were actually killing Americans. That's why we're
16 in this courtroom.

17 Now, everyone in this courtroom thanks you for your
18 time, the time you're about to give up in your lives, the
19 attention you're going to spend on each of the witnesses, on
03:54 20 the lawyers. Even though what we're saying is not evidence,
21 we're presenting it to you and we appreciate your attention
22 because it's not something you typically deal with, that you're
23 dealing with over the next several weeks, so it's important
24 that you stay focused.

25 But as you do, ladies and gentlemen, I ask you to

1 consider the charges in the indictment, not some extraneous
2 factors about what the law should be or what actually the
3 defendant was able to do for al Qa'ida. It's about his
4 conspiracy and his agreement to try to do those things for
5 al Qa'ida and lying to the FBI about it that's at the core of
6 this case. It's his actions, and the intent of those actions
7 is what we're going to be presenting to you over this time.

8 I'd submit to you that at the end of this case when
9 we've presented all the evidence the defendant will no longer
03:55 10 be sitting there as an innocent man; he will then be guilty.
11 Because the evidence will show that he committed these acts.
12 He did it with the requisite intent and that will make him
13 guilty of each of the crimes with which he's charged. And I
14 ask you to spend time deliberating on that, and at the end of
15 the trial come back to you and ask you to return that verdict.

16 THE COURT: Mr. Carney?

17 MR. CARNEY: If we could stretch for a moment?

18 THE COURT: All right. The jury in particular.

19 Jurors, you've been sitting there for a while. If you
03:56 20 want to stand up and stretch or take a deep breath, that's
21 fine. You don't have to if you don't want to, but I want you
22 to feel comfortable.

23 MR. CARNEY: Thank you.

24 Good afternoon. My name again is J. Carney, and this
25 is my law partner, Janice Bassil. And now, of course, you've

1 met our client, Tarek Mehanna. John Oh and Segal Patel are
2 also attorneys with our office.

3 I want to begin by thanking you for the sacrifice
4 you're making to be a juror in this case. You saw how many
5 jurors were able to avoid serving. And you had the
6 opportunity, if you wanted, to say things that would have let
7 you get off this jury. But each of you agreed to do it, giving
8 up the time in your life away from work, away from family, away
9 from your own interests. And I just want to tell you how
03:57 10 grateful we are that you've done that.

11 When Janice and I were appointed to represent
12 Tarek Mehanna we knew this would be a challenging case. I can
13 tell you that this isn't the usual kind of case that lawyers in
14 Boston handle. We knew it would be challenging, all the Arab
15 names, all the words. I'd be less than honest if I told you
16 that I have every single name completely straight -- even after
17 all the time I've spent preparing -- so you can probably have
18 the same experience, if not -- memorizing every single name.
19 And the words are not words that we're used to.

03:58 20 But I'll also be honest and tell you that when we saw
21 the charges, it was scary. When you read that someone is
22 charged with being a terrorist, when the person allegedly
23 conspired to kill people, when he is alleged to do all these
24 terrifying things, it's intimidating. It's scary. And so if
25 you're feeling that way, you can know that you're not the first

1 people in this case to kind of feel that way looking at this
2 case.

3 But what we did is we met with Tarek Mehanna. We got
4 to know him. We got to meet his parents. We looked at what
5 the law is that's involved in this case. We read what our
6 Constitution says. We looked at the evidence, what the real
7 evidence will be that's presented before you at this trial.
8 And I submit to you that at the end of this trial the evidence
9 will show that Tarek Mehanna did not commit the crimes that the
03:59 10 government has charged him with.

11 Now, let me tell you a little bit about this young
12 man, Tarek Mehanna. He was born in the United States, so he is
13 a United States citizen. His parents were born in Egypt.
14 They're sitting here in the courtroom, in the front. And
15 they're of Muslim background.

16 His parents came to the United States from Egypt and
17 became United States citizens and raised their family. They
18 came to this country because they wanted to be able to practice
19 their religion and because they wanted to speak their beliefs
04:00 20 without fear. And that's why they came to this country.

21 Now, I know the government has got a lot of posters
22 and diagrams and things such as that. Well, in order to tell
23 you a little bit about Tarek's upbringing, I asked his mom to
24 give me some photos. I'll show you some of them so that you
25 can see the normal American upbringing that this young man had;

1 for example, he sat on Santa's lap and told him what he wanted;
2 he learned to hit a baseball, or at least how to try to hit a
3 baseball. He was going to school in Lexington. This is his
4 school picture. I call this "Tarek Mehanna: The chubby
5 years." Who am I to talk?

6 The family often went on vacation, and Tarek was the
7 child who loved to have the video camera and take pictures of
8 everybody. They moved to Sudbury. Tarek became a
9 rock-and-roll guitarist. I don't know if he had much of a
04:02 10 future, but he's certainly enthusiastic. And he grew into a
11 young man that his mom could be very proud of.

12 Tarek lived with his parents and his younger brother
13 most of his life. He went to school, as I mentioned, in
14 Lexington and then Sudbury, where he went to Sudbury High
15 School. While he was in high school, especially as a senior,
16 he talked with friends about what their future would be. "What
17 did you want to do when you grow up?" And who among us at some
18 point in our life didn't talk to someone about what we wanted
19 to do when we were a teenager?

04:03 20 Tarek decided he wanted a career in the medical field.
21 He decided he was going to go to pharmacy college, an
22 eight-year program that would end up granting him a Ph.D. after
23 he had attended and completed all of the requirements. You'll
24 also hear that Tarek often spoke with his friends about what he
25 was going to do with his life, where he wanted to live, what

1 kind of career he wanted to have, what kind of woman he wanted
2 to marry. And they had these conversations.

3 And what also he began to talk about when he was a
4 senior in high school was about his own background, the fact
5 that he was a Muslim in a country where Muslims are a
6 significant minority. And he talked to his friends about this.
7 He became more curious about his Muslim background; about the
8 religion that he had grown up with, Islam; and he tried to
9 learn more and more about it. And he'd meet with his friends
04:04 10 and he would talk to them. He had been someone who went to the
11 mosque once a week but wasn't really a committed person. But
12 as he was getting more mature, he wanted to learn about his
13 background, about his religion.

14 You'll hear that he would get together with his
15 friends most every weekend. They'd go to the mosque; they'd do
16 their prayers. Then afterwards, they'd play basketball. And
17 after playing basketball they'd go to a pizza joint or Outback
18 Steakhouse and spend hours talking about their background and
19 what it means to be a Muslim in America, and talk about issues
04:05 20 that they were having such as: How do you pray five times a
21 day if you're going to high school? How do you find a girl to
22 marry if dating is completely awkward and you can't even kiss a
23 woman until you're married? And they wanted to know about how
24 to deal with regular problems that kids deal with, but also
25 recognizing that they are Muslim and from an Islamic

1 perspective.

2 So they would have these conversations and they would
3 talk. Tarek, in particular, became interested about his
4 background. He would buy books on Islam. He would read these
5 texts. He'd bring them to the meetings with his friends. They
6 would spend hours talking about it, the way other people might
7 talk about the Bible or other people might talk about the
8 Torah. And he wanted to know more and more about his faith.

9 He began, on his own, translating classical texts of
04:06 10 scholars from the 15th century so that he could translate their
11 works from Arabic to English. He kept wanting to study more
12 about Arabic so that he could speak it better and, in
13 particular, read it better. And as a young man learning more
14 about his background, he also learned that historically Muslims
15 had been oppressed all over the world. Historically that it
16 happened. Throughout the centuries, Muslims had been the
17 victims of all kinds of activities trying to wipe them out.

18 He became aware of the invasion of Muslim countries;
19 for example, you'll hear how the Soviet Union invaded
04:07 20 Afghanistan, which is a Muslim country. And the Soviet Union
21 occupied that country until the Muslims of that country could
22 get them out. And you'll hear that the Muslims of Afghanistan
23 were able to get the United -- able to get the Soviet Union out
24 of Afghanistan because of the very significant help that the
25 United States gave those people to get that army out of their

1 land.

2 He learned that this continues on to this day, that
3 there have been instances in the country of Bosnia where the
4 majority group tried to commit a genocide of Muslims, which
5 means wipe them out, the way the Nazis tried to wipe out the
6 Jews. You'll hear that people in Chechnya were being driven
7 from their homes, driven from their villages, simply because
8 they were Muslim. You'll hear how Muslims were and are
9 oppressed in countries in the Middle East by dictators such as
04:09 10 in Egypt, in Libya, in Syria, things that are changing finally
11 for those first two countries. As Tarek learned more about
12 this, he was learning about his own background, his own
13 history, his own heritage.

14 When 9/11 occurred, Tarek was shocked and confused.
15 He could not understand why Muslims would attack the United
16 States. When the United States went into Afghanistan to seek
17 justice, he understood it. He understood it and accepted it
18 because that's where the planning for the 9/11 attack had taken
19 place.

04:10 20 But you'll hear that when the United States invaded
21 another Muslim country, Iraq, he couldn't understand that. He
22 couldn't accept that. He believed that the justification for
23 the United States to go in to Iraq and overthrow the government
24 there was bogus; that it was some kind of a payback reason, and
25 that there was no justification for the United States to be in

1 Iraq, and that Tarek believed with all his sincerity that the
2 United States should get out of Iraq.

3 Now, I'm not going to be asking you to necessarily
4 agree with that. I'm not here to try to convince you that his
5 view, or the view of millions of others, was the correct view.
6 I am asking you to accept that in this country, in the United
7 States of America, you can hold that view and not be punished
8 for it even if the federal government doesn't want you to hold
9 that view. Here we are different, and it's a bedrock principle
04:11 10 that we can hold those types of views.

11 Tarek was outspoken about it. Yes, the prosecutor is
12 correct. Tarek spoke frequently to his friends about it; he
13 sent instant messages about it; he sent emails about it; he got
14 on the Internet, on forums, and talked about it. Make no
15 mistake about it: Tarek believed that the United States should
16 get out of Iraq. He also believed that the Muslim people of
17 Iraq had a right to do whatever they could to get the United
18 States out of that country.

19 In my generation, to kind of show my age, there were a
04:12 20 lot of people who believed that about Vietnam: that the United
21 States went into Vietnam on bogus reasons, that we didn't
22 belong there, we should get out of Vietnam, and that the people
23 in Vietnam were legitimate in trying to get the United States
24 out of their country. Again, I'm not asking you to agree with
25 that, but in this country you could hold that view. You could

1 sincerely say, "I love America, but we don't belong in
2 Vietnam," just like you can say, "I love America, but we don't
3 belong in Iraq."

4 Now, as Tarek went through college he thought about
5 what he wanted to do in his life. He decided that after he
6 finished college and got his Ph.D. in pharmacy, he would move
7 to a Middle Eastern country, a Muslim country. That was his
8 plan. He would work in the medical field there as a
9 pharmacist, look for a job in a medical center. He would look
04:13 10 for a woman to marry, have children with. And he also would
11 look for the opportunity to continue his study of classical
12 Arabic and Islamic law.

13 What you will see is that Tarek was obsessed with
14 historical documents about Islamic law. That frequently on
15 these forums they would discuss these ins and outs of the
16 teachings of the Koran or the sayings of the prophet. I know
17 people who do that in regard to the Torah and try to discuss
18 various aspects of it and "What does this mean?" and "What does
19 that mean?"

04:14 20 Tarek was studying Arabic almost every single day.
21 You'll see a picture of his bedroom. Normally, you would see
22 people at his age with maybe posters on the wall. Maybe it
23 would be of a rock star, maybe it would be one of those funny
24 posters of a professional athlete. But what you'll see in
25 Tarek's bedroom are these tall bookcases with Islamic book

1 after book, treatises, series -- 15-volume series on Islamic
2 law in the 15th century. He was known among everyone as a
3 scholar, someone who really studied this material and collected
4 it, who discussed it online with other people. And he had said
5 that he would like the opportunity someday to go to Yemen.

6 Now, why go to Yemen? It's one of the poorest
7 countries in the world. People there live in mud huts. But
8 there are two things that Yemen is known for. The first is the
9 study of what's called "pure Arabic." The reason the Arabic in
04:16 10 Yemen is so pure is because the country is so poor and so
11 backward that it just doesn't have the influences to pollute
12 the classical language. There aren't a lot of colloquialisms
13 that come in from other dialects or other languages; there
14 isn't an Internet presence in Yemen; people aren't watching TV
15 every night. They're just living a subsistence life. It's
16 almost like those Indian tribes that you read about in Brazil
17 that are discovered that are completely the same as the way
18 they lived 300, 400 years ago. And you'll hear from experts
19 that Yemen is known worldwide as a source for studying
04:17 20 classical Arabic.

21 And the second thing that Yemen is known for is the
22 study of Islamic law. The government of Yemen funds these
23 schools. People can attend by just showing up. They're not
24 political at all; they are simply religious schools. And Tarek
25 had talked to people that at some point in his life he would

1 like to go to Yemen and study at these schools: study Arabic
2 and study Islamic law. And the experts, the academic experts
3 who have studied this also, will confirm for you that this is
4 exactly where you go if you wanted to study these subjects.

5 Now, Tarek had mentioned this many times to his
6 friends, about his desire to go do this sometime in Yemen. And
7 two of the friends he was talking about are two of the people
8 that were on that chart shown by the government to you:
9 Abousamra and Kareem. They were interested in going to Yemen
04:18 10 but for different reasons. They wanted to go to Yemen for
11 military training with the intention of going from Yemen on to
12 Iraq and fight. That was not why Tarek wanted to go. The
13 reason Tarek wanted to go was to visit the schools that he
14 hoped at some point in the future to be able to attend.

15 But he knew he couldn't go for one reason: His
16 parents probably wouldn't allow it right then, and he had no
17 money to go. But Kareem said he'd pay for the plane ticket for
18 Tarek so Tarek could go. Abousamra, Kareem and Tarek flew to
19 London, then to the United Arab Emirates, and then Kareem got a
04:19 20 message he should return home, and he did.

21 Tarek and Abousamra went on to Yemen. And while
22 there, Tarek toured three different schools. You'll hear how
23 he met with the teachers, sat in on the classes and talked to
24 the fellow students. He spent a week there doing that. While
25 he was doing that, Abousamra was trying to find out if there

1 was any military camp that he could get training at.

2 There were no military camps in Yemen in 2004 or 2003.

3 You'll hear from the foremost expert in the United States on
4 the country of Yemen. He has lived in Yemen; he has visited
5 Yemen dozens of times; he has written constantly about Yemen.

6 He's the foremost expert on that country. He speaks the
7 language; he knows the government; he knows the people; he
8 knows of these schools. He's at Princeton University, and he
9 will come here and confirm every single thing I'm saying.

04:20 10 After Tarek had visited the schools he returned to the
11 United States. The timing had been good for him. His parents
12 were away, so Tarek could just leave while they were away and
13 get back before they were back. The timing was also perfect
14 for Tarek because he could do it during the semester break.
15 And so after going to Yemen and visiting these schools, he
16 returned to the United States and resumed his education when
17 the semester began shortly after he came back, because he was
18 going there for that very purpose.

19 Abousamra, on the other hand, decided to go on to Iraq
04:21 20 and try to fight, and he did so. He went to Jordan and then on
21 to Iraq and attempted to fight. The reason he went to Yemen
22 was different than the reason Tarek went, and the evidence will
23 show that.

24 Upon Tarek's return from Yemen, he became even more
25 outspoken about his views that the United States should not be

1 in Iraq. He held those views. Indeed, many people have held
2 those views. And he advocated those views independently of
3 al Qa'ida. And that is probably the most important point that
4 I want to say to you.

5 In the United States Tarek Mehanna believed that he
6 could express these views of his because he felt he was doing
7 so under the freedom granted him by the First Amendment, and
8 that he was permitted to say these things. And that's why he
9 did it so openly with his friends, in emails, in instant
04:22 10 messages. The government makes it seem like he was doing
11 things secretly. Tarek was on the Internet -- on these
12 Internet forums -- constantly, putting out his views and saying
13 what he believed.

14 His independent advocacy of these views is perfectly
15 legal, because for it to be a crime it would only be if you are
16 doing something directly because al Qa'ida is telling you or
17 you're hired by al Qa'ida to do it or you're ordered by
18 al Qa'ida to do it or you're paid by al Qa'ida to do it. If
19 you are doing it because that's what you sincerely believe,
04:23 20 then recall -- the judge read a portion of the statute that
21 said independent advocacy of these beliefs, even if they're the
22 same beliefs that a terrorist organization holds, is not a
23 crime in the United States.

24 Congress put that right in the law. And when the U.S.
25 Supreme Court reviewed this law, it affirmed that and said that

1 is completely true. Unless you are doing something directly
2 working for al Qa'ida, it's not a crime. And so that's what
3 I'd ask you to focus on in this evidence.

4 Tarek was not shy about his views. Yes, he expressed
5 admiration for Osama bin Laden. He did that. Osama bin Laden
6 was someone who was a billionaire in a Muslim country and gave
7 up his money and went to Afghanistan to fight the Soviet Union.
8 He committed all of his resources to get the Soviet Union out
9 of the Muslim country.

04:25 10 We not only supported that effort, but we praised the
11 Muslims involved in that as freedom fighters. There's a great
12 movie called "Charlie Wilson's War." It's got clips of people
13 like President Reagan standing next to the Muslims and calling
14 them freedom fighters for getting the Soviet Union out of their
15 Muslim country. And Tarek respected bin Laden for having done
16 that. He didn't hide his beliefs; he wore them on his sleeve.

17 Tarek downloaded a lot of videos. Like most people of
18 his generation, he lives almost on the Internet looking at
19 videos, looking at documents. And he downloaded them. He
04:25 20 downloaded dozens of videos, dozens of books. He was reading,
21 he was trying to understand the other point of view. He wanted
22 other people to understand the other point of view, so he would
23 often translate documents.

24 I expect that Judge O'Toole will tell you just what
25 the prosecutor said: It is not illegal to download these

1 videos; it is not illegal to download these documents; it's not
2 illegal to collect all this on your computer. You can do this
3 because we are the United States. We're not afraid of what
4 other people say, or at least we're not supposed to be. And
5 Tarek downloaded a lot of graphic war videos: people shooting
6 at each other, of people being killed, of bombs going off,
7 bodies of dead soldiers, dead people.

8 He was upset about a lot of things. He was upset when
9 he read that soldiers from a United States unit had raped a
04:27 10 14-year-old Muslim girl and then killed her and her family. He
11 was upset when he saw the degrading pictures that came out of
12 Abu Ghraib prison, about making Muslims walk along with a leash
13 on or do things that were humiliating that I believe that all
14 good Americans were outraged about.

15 I'd ask you to look closely at the evidence, as I know
16 you will. The government has certainly made, you know, a lot
17 of assertions. They said that Tarek Mehanna wanted people to
18 be able to read these documents that were placed on the
19 Internet or understand these videos. You're right. What did
04:28 20 Libya do when the revolt against Qaddafi started? They shut
21 down the Internet so people couldn't see it. What does China
22 do to prevent its people from reading articles about democracy?
23 They censor the Internet.

24 If you can read something, either a document or a
25 caption to a video, you can learn what another side is

1 thinking. If it's perfectly legal to read it, then translating
2 it so more people can read it shouldn't frighten this country
3 and shouldn't frighten us.

4 Now, the government keeps trying to make this
5 connection of Tarek to al Qa'ida. And they made some
6 assertions here. I'd ask you just to remember what the
7 government said when the actual evidence comes in; for example,
8 what was the climatic point that the prosecutor said about
9 tying Tarek Mehanna to al Qa'ida? That "You will see that a
04:29 10 representative of al Qa'ida contacted the defendant and asked
11 him to translate a document, a video. You'll see that they
12 asked him directly." Oh, they didn't mention he didn't do it.
13 If someone wrote you a letter and asked you to do something and
14 you didn't do it, is that the same as if you did? It will be
15 for you to decide if you accept how the government wants to
16 present this evidence.

17 Just another example: The prosecutor said something
18 scary about plotting to shoot up a shopping mall. Horrifying.
19 But they didn't mention that when someone said that, Tarek's
04:30 20 response was, "Oh, come on. That's ridiculous." Does that
21 make a difference to you?

22 What I'm asking you to look at is not just the first
23 half of what the prosecutor tells you, look at the whole
24 picture and see if that's an honest presentation of what the
25 evidence in this case really, truly is.

1 Now, what you will see in this case is that
2 Tarek Mehanna didn't do anything. It's not a coincidence that
3 the government keeps saying, "Oh, it doesn't matter that the
4 defendant didn't do anything," "Oh, and you might not like the
5 law but, you know, if he didn't do anything, especially amidst
6 all these other people who did do things, if he talked about
7 it, made an agreement, that's enough."

8 Take a look closely at what he talked about and what
9 his positions were, because they were consistent. What he was
04:32 10 doing is advocating that the United States get out of Iraq. He
11 was not doing it because al Qa'ida told him to or paid him to
12 or directed him to or hired him to. Just like millions of
13 other people have wanted the United States to get out of Iraq,
14 which we are finally apparently doing this year, and just like
15 those millions of people, he had a right to express his
16 beliefs. He had a right to advocate for this opinion.

17 His Honor will explain what the U.S. Supreme Court
18 said about this. The U.S. Supreme Court said you can even be a
19 member of al Qa'ida. You can advocate for exactly the same
04:32 20 things that al Qa'ida is advocating for. But if you are doing
21 your position -- and by the way, there's no suggestion
22 whatsoever that Tarek was ever any member of al Qa'ida. If the
23 evidence shows that Tarek Mehanna was independently advocating
24 his own views because that's what he believed, then he is not
25 guilty of the charges against him.

1 There will be individuals who will come in and talk
2 about conversations they had with Tarek, the people on that
3 chart the government presented. What you'll find interesting,
4 I suspect, is that every one of those people did do something.
5 They did go to a training camp or they did go to a foreign
6 country and fight or they did have direct contact with
7 al Qa'ida. All of those people did that. Or gave money to
8 those organizations. All of those people on that list did
9 something, and they're going to come in and tell you about how
04:34 10 Tarek talked. And they all have immunity now so that nothing
11 will happen to them.

12 In 2008 Tarek graduated from college with his Ph.D.
13 He looked to find a job and he was offered an excellent
14 position at a medical center in Saudi Arabia. He made plans to
15 go there and take that job to work in a pharmacy. He bought
16 airplane tickets to go over. It was no secret. Everybody that
17 he knew, he told about what he was going to be doing, and he'd
18 be going there.

19 One of the interesting facts: The only country in the
04:35 20 world that al Qa'ida hates more than Israel and the United
21 States is Saudi Arabia. That's where Tarek was going to live.
22 And what does the government chart say when this young man is
23 at the airport saying good-bye to his family, you know, and
24 "Keep in touch," "Write often," you know, hugging, kissing at
25 the airport as he's about to get on a plane? The FBI comes

1 over and places him under arrest. How does the government
2 characterize that? "Mehanna attempts to leave the United
3 States," as if that's part of the government's, you know,
4 allegations that this was all part of his plan.

5 Do you remember when the government told you that
6 Tarek Mehanna was on the Tibyan website as an administrator
7 where so much of this discourse, this interchange occurred? I
8 feel like, sometimes, Paul Harvey, that news broadcaster.
9 Well, here's the rest of the story that the government didn't
04:36 10 mention: Tarek was kicked off Tibyan and not allowed to engage
11 in any of the discussions on the forum on Tibyan because he was
12 viewed as being too moderate in his views. And they kicked him
13 off and wouldn't let him even participate.

14 You don't have to agree with any belief that
15 Tarek Mehanna had; you don't have to agree with other beliefs
16 that people have, whether it's that the United States should
17 not be in Iraq, whether the United States should do one thing
18 or another around this country. You don't have to believe it.
19 I'm not even asking you to believe it any more than I'm asking
04:37 20 anyone to believe what you hold true.

21 As Americans we have that freedom. We can hold on to
22 these beliefs and we can speak them even if it upsets the
23 federal government. It's what makes the United States so
24 great, so strong and so free.

25 Thank you very much.

1 THE COURT: Okay, jurors. We went a little bit over
2 what we would normally do, but I wanted to be sure we got
3 through this phase of -- the beginning phase of the case were
4 the opening statements. We'll recess now and come back and
5 start in the morning with the actual presentation of the
6 evidence.

7 Now, I have some important things to say to you.
8 There will be a lot of occasions like this, the end of the
9 day's worth of evidence -- or not quite evidence yet, I guess,
04:38 10 today -- and we'll be breaking and be going off with what
11 you've heard during the day sort of fresh in your mind. I want
12 you please to avoid any discussion of the evidence in the case
13 among yourselves as a jury and, particularly, with anybody
14 outside -- folks at home. You could tell them what's -- the
15 general outline of what's going on, but don't get into the
16 details of the evidence. It is very important that at the end
17 of the case when you're deliberating on the evidence, you're
18 all focused on exactly the same body of information that you've
19 heard collectively here in the courtroom and not on something
04:39 20 somebody might by chance say over dinner as you're talking
21 about something in the case, okay? So please stay away from
22 the details of the evidence in the case with any discussion
23 with anybody here or at home.

24 We talked a little bit in the selection process about
25 the fact that there will be media coverage of this event. I'm

1 sure that's the case and there will be stories in the papers
2 and on TV. Please avoid them. It's part of your duty now as
3 sworn jurors to keep your minds focused on, again, the common
4 body of evidence that you will have from being here in the
5 courtroom and seeing it. And so we ask you to do that, and I'm
6 sure you will.

7 In this modern age we now have a new caution. We have
8 to ask jurors to avoid any independent research on the
9 Internet. It is so easy to do. We all do it. And you may
04:40 10 hear things -- maybe you'll hear a name, maybe you'll hear a
11 place -- and you're just kind of curious about it. Please
12 avoid it. Again, it would give you, as an individual,
13 something that the rest of the jury didn't have, and that would
14 be inappropriate.

15 When the case is all over you can do all of those
16 things: talk to your friends about what you've heard in the
17 case, go online and see what you can find out further. But for
18 the time being while you're serving in the office of juror,
19 please abide by those restrictions, all right?

04:40 20 Thank you, again, for your service. As both counsel
21 have said to you, we do appreciate it deeply. And we'll recess
22 now and see you tomorrow morning to begin the evidence in the
23 case.

24 THE CLERK: All rise for the Court and jury.

25 (The Court and jury exit the courtroom at 1:23 p.m.)

1 THE CLERK: Court will be in recess.

2 (The proceedings adjourned at 1:23 p.m.)

3

4 C E R T I F I C A T E

5

6 We, Marcia G. Patrisso, RMR, CRR, and Cheryl
7 Dahlstrom, RMR, CRR, Official Reporters of the United States
8 District Court, do hereby certify that the foregoing transcript
9 constitutes, to the best of our skill and ability, a true and
10 accurate transcription of our stenotype notes taken in the
11 matter of Criminal Action No. 09-10017-GAO-1, United States of
12 America v. Tarek Mehanna.

13

14 /s/ Marcia G. Patrisso
15 MARCIA G. PATRISSO, RMR, CRR
Official Court Reporter

16 /s/ Cheryl Dahlstrom
17 CHERYL DAHLSTROM, RMR, CRR
Official Court Reporter

18

19 Date: 10/27/11

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